APPEAL NO. 022592
FILED NOVEMBER 19, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on September 18, 2002. The hearing officer determined that the decedent did not sustain a compensable injury on _____, resulting in her death, because it occurred during the course of "coming and going" travel to work. The appellant (beneficiary) appealed and the respondent (self-insured) responded, urging affirmance.

DECISION

Reversed and rendered.

It is undisputed that on _____, the decedent was employed by the self-insured as an elementary school principal and that on her way to attend a spelling bee, in which a student at her school was to participate on behalf of the school, she was involved in a fatal motor vehicle accident (MVA). The location of the spelling bee was not another school but a central community center. The evidence indicates that the decedent left from her house to go directly to the site of the spelling bee on the morning of the fatal MVA because of its early morning beginning. She was not at fault in the accident, and was quite literally "in the wrong place at the wrong time."

In a statement to the adjuster, another principal (Ms. B) and employee of the self-insured described how she was also attending the event and left directly from her home to attend the event, which was sponsored by a local business. Ms. B made telephone contact by cell phone with the decedent 20 minutes before the spelling bee was to start and found that the decedent was on the street where the accident subsequently occurred. Ms. B also described how principals who were attending such events had to call in to their own supervisors as well as their school staffs to let them know they would be going directly to the spelling bee. Ms. B described attendance at the spelling bee as something a principal "should" do, even if not expressly laid out in a job description. There was evidence of the policy of the self-insured to reimburse mileage for attendance and transportation to such events. Although the self-insured argued that the decedent was "voluntarily" attending the spelling bee, there was no evidence at all of any personal purpose that was furthered by such a journey. In fact, there was evidence that students were permitted to engage in such activities under the supervision of the self-insured's professional staff in order to be considered "in attendance" at school. Nor was any evidence offered that the decedent would be expected to charge the time in attendance at the spelling bee as personal time. There was no evidence that she was not going to return to her school after the spelling bee and in fact the evidence indicated that she had reported that she would be away from her school for that "morning."

In addition to specific duties, the policies of the self-insured contain many more globally-phrased objectives in job descriptions for persons employed as was the

decedent. For example, the decedent was to "establish and maintain communication with personnel and students to foster a productive school climate." Likewise, the decedent was to "utilize district and community resources in developing the most effective educational program." Among qualifications for persons in the deceased's position were "leadership ability in working with teachers and students in instructional and managerial administration" and "strong communications, public relations, and interpersonal skills." The decedent was to "provide for the close supervision of extracurricular activities." It is clear from reading the job description that the principal was to perform his or her duties with minimal supervision.

The attendance policies of the self-insured allowed for student participation in "activities sponsored by civic or other outside organization, which, in the opinion of the principal, are of educational value to the student's academic program." Another principal (Ms. A) who testified said that there were numerous off-campus events that it was expected a principal would attend as part of his or her duties, and examples analogous to the spelling bee were cited by her as well as the spelling bee itself. Ms. A said that participation of the schools and students in the spelling bee was actively promoted by the self-insured and that the student participating the morning of the accident was the representative of the school. Ms. A testified that travel to such activities would be in one's own car and that the self-insured reimbursed for such mileage and that such activities were beneficial to the self-insured. The policy of the self-insured expressly excluded commuting to and from home from reimbursement. Although other policies in evidence indicate that the regular work day was from 8:00 am to 4:30 pm, both the beneficiary and Ms. A testified that the decedent and other principals worked earlier and later hours than that on a frequent basis. There were no witnesses presented by the self-insured to counter evidence presented by the beneficiary or by Ms. A.

It is clear that the hearing officer believed the activity to be one that was within the job description of the employer, because the hearing officer characterizes the travel as "merely going to her place of employment" when the accident occurred. It appears that the hearing officer placed considerable importance on the fact that the decedent did not go first to her school and then to the spelling bee; the hearing officer implies that had the decedent gone first to her school, subsequent travel to the spelling bee would have been within the course and scope of employment. We find, under the facts of this case, that this is a distinction without a difference, and that the decedent was not merely traveling to her place of employment or acting as a "commuter" but was within the course and scope of her employment as an elementary school principal at the time of her death. Had the decedent not been going to the spelling bee because of her duties as principal, she arguably would not have been in harm's way on the date of the accident.

The beneficiary is the surviving widower of the decedent, and testified that she had frequently attended the spelling bee in previous years because there were students from her school who participated. He said that her workday often began before 8:00 am and/or lasted until 6:30 at night. The route taken to the location of the spelling bee was

not the usual route that the decedent would have taken to her school. The beneficiary was the sole beneficiary under the 1989 Act, as the decedent's children were not minors or fulltime students.

As defined in Section 401.011(12), "course and scope of employment" means an activity of any kind or character that has to do with and originates in the work, business, trade, or profession of the employer and that is performed by an employee while engaged in or about the furtherance of the affairs or business of the employer. The term includes an activity conducted on the premises of the employer or at other locations. The term does not include:

> (A) transportation to and from the place of employment unless:
>
> (i) the transportation is furnished as a part of the contract of employment or is paid for by the employer;
>
> (ii) the means of the transportation are under the control of the employer; or
>
> (iii) the employee is directed in the employee's employment to proceed from one place to another place[.]

Although the fact of reimbursement alone may not bring an activity within the course and scope of employment, such payment in this case is further evidence of the "special mission" aspect of the travel to the spelling bee. It is clear from the policy in evidence of the self-insured that reimbursement would not be allowed unless such activity were a furtherance of the employee's duties. Furthermore, as stated in Rose v. Odiorne, 795 S.W.2d 210 (Tex. App.-Austin 1990, writ denied), payment by the employer for transportation prevents a worker from being excluded from coverage simply because he or she was traveling to or from work. The beneficiary in this case was permitted to show that the death was otherwise compensable--in short, that the injury originated in the employer's business.

In this regard, we find Texas Workers' Compensation Commission Appeal No. 961193, decided July 30, 1996, more in point than cases cited by the self-insured which involve scheduled employee training. Appeal No. 961193 also involved a fatal injury while a repairman was traveling directly to a customer's site first thing in the morning. The Appeals Panel rejected the argument that the customer's site was merely a "remote premises" of the employer such that the travel thereto came within the "coming and going" exception set out in the definition of course and scope of employment in Section 401.011(12)(A). As stated in that case:

> Applying the provisions outlining the transportation exception to "course and scope of employment", it is clear from the evidence that the hearing officer could believe that decedent was traveling to the customer at the direction of the employer, within the exception in Section

> 401.011(12)(A)(iii) to the "coming and going" rule. We believe that the "direction" in this case is found in the employer's objective that its customer's needs be serviced, that approved and reimbursed travel was therefore undertaken by decedent to allow expeditious performance of such servicing missions, and that travel to the customer's site without the need to report first to the office furthered the employer's desire to allow more billable projects to be accomplished within the workday.

See also: Texas Workers' Compensation Commission Appeal No. 980133, decided March 6, 1998, and Texas Workers' Compensation Commission Appeal No. 962134, decided December 9, 1996. Likewise, the case of Liberty Mutual Insurance Company v. Chestnut, 539 S.W.2d 924 (Tex. Civ. App.-El Paso 1976), rejected an argument that reimbursed travel to and from a remote oilfield worksite fell within the "coming and going" exclusion.

There was no other explanation advanced for the travel in this case than attendance at the spelling bee in concert with other principals employed by the self-insured, at an activity promoted by the self-insured even if not sponsored by it. The absence of the student who participated was an excusable (and educational) absence under the self-insured's policy. The determination that the decedent was not within the course and scope of her employment at the time of the fatal accident is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986). Accordingly, we reverse the determination that the decedent was not compensably injured, and render a decision that the decedent was killed within the course and scope of her employment, and was not merely going to and from work, and that the beneficiary is entitled to death benefits.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

ACTING SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Susan M. Kelley
Appeals Judge

CONCUR:

_____
Gary L. Kilgore
Appeals Judge

_____
Robert W. Potts
Appeals Judge